Remarks

Claims 1-38 are pending. Pursuant to 37 C.F.R. § 1.116 (b)(2), Claims 1-5, 7-9 and 21-38 are amended to present these rejected claims in better form for consideration on appeal.

The Examiner rejected Claims 26-37 under 35 U.S.C. § 101, the Examiner indicated that the claimed subject matter failed "to produce a 'useful, concrete, tangible result.' Applicant respectfully submits that this rejection under 35 U.S.C. § 101 is improper, as it should have been raised in a previous office action, and not the first time in a final office action, contrary to the requirements of MPEP § 707.07. Nevertheless, as amended, Claims 26-37 now recite a set of computer instructions (i.e., a computer program), which is within the technological art. In addition, Claims 26-37 each recite computer instructions that, when executed by a computer:

> ...provide the price as data to be included in determining service charges to a customer associated with the transaction.

Such instructions therefore determine the amount of money a customer pays as service charges, which is clearly a "useful, concrete, tangible result." The Examiner's rejection under 35 U.S.C. § 101 is therefore believed overcome.

The Examiner rejected Claims 9-24 and 26-37 under 35 U.S.C. § 112, second paragraph, the Examiner objecting to (1) the terms "representing" and "received transaction" in Claim 9, (2) the grammar of Claim 22, and (3) Claims 26-37 as being unstatutory under 35 U.S.C. § 101. Applicant also respectfully submits that this rejection under 35 U.S.C. § 112, second paragraph, is improper, as it should have been raised in a previous office action, and not the first time in a final office action, contrary to the requirements of MPEP § 707.07.

LAW OFFICES OF
CPHERSON KWOK CHEN &
HEID LLP
1762 Technology Drive
Suite 226
SAN JOSE, CA 95110

TEL (408) 392-9250
FAX (408) 392-9262

Nevertheless, as amended, the term "representing" of Claim 9 is replaced by "relating to" to clarify that the limitations following "relating to" is part of the claimed invention. The term "received transaction" is eliminated from all claims.

With respect to the Examiner's objection to Claim 22, it is not clear what the Examiner finds "not making grammatical sense". Claims 2-5 and 21-24 are now amended to indicate that terms of art are used to refer to the pricing method used.

The Examiner's objection to Claims 26-37 as being unstatutory under 35 U.S.C. § 101 is believed overcome, as explained above.

Thus, the Examiner's rejection under 35 U.S.C. § 112, second paragraph, is believed overcome.

The Examiner rejected Claims 9-24 and 26-37 under 35 U.S.C. § 102(e) as being anticipated by (a) U.S. Patent 6,324,522 ("Peterson") or (b) U.S. Patent 6,598,029 ("Johnson"). As indicated in the attached Notice of Appeal, these rejections are hereby appealed.

The Examiner rejected Claims 9-24 and 26-37 under 35 U.S.C. § 103(a) as being unpatentable over (a) Peterson or (b) Johnson. As indicated in the attached Notice of Appeal, these rejections are also hereby appealed.

If the Examiner maintains his rejections of Claims 26-37 under 35 U.S.C. § 101 and Claims 9-24 and 26-37 under 35 U.S.C. § 112, second paragraph, these rejections are also hereby appealed.

LAW OFFICES OF
CPHERSON KWOK CHEN &
HEID LLP
1762 Technology Drive
Suite 226
SAN JOSE, CA 95110

TEL (408) 392-9250
FAX (408) 392-9262

If the Examiner has any questions regarding the above, the Examiner is requested to telephone the undersigned at (408) 392-9250.

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on January 14, 2005.

Attorney for Applicant(s) — Date of Signature: 1/14/2005

Respectfully submitted,

Edward C. Kwok
Attorney for Applicant
Reg. No. 33,938

LAW OFFICES OF
CPHERSON KWOK CHEN & HEID LLP
1762 Technology Drive
Suite 226
SAN JOSE, CA 95110

TEL (408) 392-9250
FAX (408) 392-9262